

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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T. MATTHEW PHILLIPS, Next Friend of
D.M.P., a Minor,

Plaintiff,

v.

VINCENT OCHOA et al.,

Defendants.

Case No. 2:22-cv-02086-RFB-BNW

ORDER

Before the Court are three motions to dismiss brought by the Defendants. ECF Nos. 7, 8, 12. For the reasons below, they are granted.

I. FACTUAL ALLEGATIONS

On December 19, 2020, Defendant Judge Vincent Ochoa of the Defendant Eighth Judicial District Court, Family Division, issued an order terminating Plaintiff T. Matthew Phillips' parental rights regarding Plaintiff's son and giving Defendant Amber Korpak sole legal and primary physical custody. As part of this decision, Judge Ochoa relied upon Nevada Revised Statutes § 207.190. Defendant District Attorney Steve Wolfson, Defendant Deputy District Attorney Gerard Constantian, and Defendant Jon Norheim are involved in the enforcement of Judge Ochoa's order.

II. PROCEEDURAL BACKGROUND

On December 16, 2022, Plaintiff filed the Complaint in this case. ECF No. 1. On February 14, 2023, Defendants Eighth Judicial Circuit, Norheim, and Judge Ochoa filed a Motion for Dismiss the Complaint. ECF No. 7. On February 23, 2023, Defendants Clark County, Constantian, and Wolfson filed a

1 Motion to Dismiss the Complaint. ECF No. 8. On March 7, 2023, Defendant Korpak filed a Motion Dismiss
2 the Complaint. ECF No. 12. Each motion to dismiss was fully briefed. ECF No. 9, 13, 14, 16, 19, 20.

3 4 **III. LEGAL STANDARD**

5 An initial pleading must contain “a short and plain statement of the claim showing that the
6 pleader is entitled to relief” Fed. R. Civ. P. 8(a). The court may dismiss a complaint for lack of
7 subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The court may also dismiss a complaint for
8 “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In ruling on a
9 motion to dismiss, “[a]ll well-pleaded allegations of material fact in the complaint are accepted as
10 true and are construed in the light most favorable to the non-moving party.” Faulkner v. ADT Sec.
11 Services, Inc., 706 F.3d 1017, 1019 (9th Cir. 2013) (citations omitted).

12 To survive a motion to dismiss, a complaint need not contain “detailed factual allegations,”
13 but it must do more than assert “labels and conclusions” or “a formulaic recitation of the elements
14 of a cause of action” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp.
15 v. Twombly, 550 U.S. 544, 555 (2007)). In other words, a claim will not be dismissed if it contains
16 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,”
17 meaning that the court can reasonably infer “that the defendant is liable for the misconduct
18 alleged.” Id. at 678 (internal quotation and citation omitted). The Ninth Circuit, in elaborating on
19 the pleading standard described in Twombly and Iqbal, has held that for a complaint to survive
20 dismissal, the plaintiff must allege non-conclusory facts that, together with reasonable inferences
21 from those facts, are “plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S.
22 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

23 24 **IV. DISCUSSION**

25 **A. Judicial Notice**

26 As a preliminary matter, the Court takes judicial notice *sua sponte* of the Nevada Supreme
27 Court’s decision in Plaintiff’s state case, Phillips v. Phillips, Nos. 82414, 82693, 2022 Nev. Unpub.
28 LEXIS 347 (April 29, 2022) and the denial of Plaintiff’s petition for a writ of certiorari, Phillips

1 v. Phillips, No. 22-5622, 2022 U.S. LEXIS 5025 (November 21, 2022). A court may take judicial
 2 notice of court filings and other matters of public record. See Reyn's Pasta Bella, LLC v. Visa
 3 USA, Inc., 442 F.3d 741, 750 n.6 (9th Cir. 2006); Fed. R. Evid. 201 (permitting judicial notice for
 4 adjudicative facts that can be accurately and readily determined from sources whose accuracy
 5 cannot reasonably be questioned). In doing so, the Court does not consider any disputed matters
 6 contained within those court filings, only their existence and any stated reasoning of the courts.
 7 Lee v. City of L.A., 250 F.3d 668, 689-90 (9th Cir. 2001).

8 **B. Judicial Immunity**

9 It is clearly established that a judge is generally immune from a suit for money damages
 10 for their judicial actions. Mireles v. Waco, 502 U.S. 9, 9 (1991) (collecting cases).

11 There are two exceptions. First, judicial immunity does not cover acts that are not judicial
 12 in nature. See Lund v. Cowan, 5 F.4th 964, 971 (9th Cir. 2021) (citing factors for determining
 13 whether an act is judicial in nature); Forrester v. White, 484 U.S. 219, 227 (1998) (holding that an
 14 act “does not become less judicial by virtue of an allegation of malice or corruption of motive).
 15 Second, a Judge may be liable for damages under § 1983 where they act in “clear absence of all
 16 jurisdiction.” Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (quoting Bradley v. Fisher, 80
 17 U.S. (13 Wall.) 335, 347 (1871)). This is a broad immunity: “A judge will not be deprived of
 18 immunity because the action he took was in error, was done maliciously, or was in excess of his
 19 authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all
 20 jurisdiction.’” Id. “Jurisdiction should be broadly construed to effectuation the policies supporting
 21 immunity. Ashelman v. Pope, 793 F.2d 1072, 1076 (9th Cir. 1986).

22 Plaintiff argues, first, that Judge Ochoa’s order is not a judicial act because his act was
 23 “ministerial.” To this point, Plaintiff cites dicta in Pierson v. Ray for the proposition that judicial
 24 immunity does not apply where there are allegations of malice. 386 U.S. 547, 567 n.6 (1967).
 25 However, to the extent the Pierson applies and stands for Plaintiff’s proposition, it was overruled
 26 by the Supreme Court’s later decision in Forrester, which explicitly held that it is the act not the
 27 motive that is relevant. 484 U.S. at 227 (1998). Here, issuing an opinion is an inherently judicial
 28 act and, thus, the Court finds that Plaintiff has not adequately pleaded the first exception to absolute

1 judicial immunity. See Myrick v. Greenwood, 856 F.3d 487 (7th Cir. 2017) (per curiam) (affirming
 2 the district court's summary dismissal of a § 1983 for money damages against a judge who was
 3 allegedly biased in favor of the plaintiff's former husband in a divorce and custody proceeding).

4 Second, Plaintiff argues that Judge Ochoa tried Plaintiff under a criminal statute without
 5 an indictment. Judges of the Eighth Judicial District Court's Family Division are vested with
 6 subject matter jurisdiction over cases like Plaintiff's state case. NRS § 3.223 (providing original,
 7 exclusive jurisdiction). Judges in that court, like Judge Ochoa, are required by Nevada law to
 8 consider acts of domestic violence. See NRS § 123C.0035 A clear absence of subject matter
 9 jurisdiction for purposes of judicial immunity means a complete and total lack of all jurisdiction.
 10 Stump, 435 U.S. at 356-57. Here, the Nevada statutes clearly support jurisdiction. The Nevada
 11 Supreme Court, interpreting Nevada law on Plaintiff's state appeal, determined as much. The
 12 Court finds that Judge Ochoa is shielded by absolute judicial immunity from Plaintiff's individual
 13 liability claims. See in re Castillo, 297 F.3d 940, 947 (9th Cir. 2002) (stating that judicial immunity
 14 "promotes the use of appellate procedures as the standard system for correcting judicial error.").

15 C. Rooker-Feldman Doctrine

16 Federal courts are courts of limited jurisdiction. See U.S. CONST. art. I, § 2 (delineating the
 17 judicial authority of the federal courts); Marbury v. Madison, 5 U.S. 137, 179-180 (1803) (holding
 18 the Constitution acts as a ceiling on the jurisdiction of the federal judiciary). Among the limitations
 19 on federal judicial power is subject matter jurisdiction, which established the contours of what
 20 types of cases can be heard. Lightfoot v. Cendant Mortg. Corp., 580 U.S. 82, 91-92 (2017); see
 21 also 28 U.S.C. §§ 1331, 1332, 1367 (implementing federal jurisdiction in state law diversity cases
 22 and federal question cases). Where a Court lacks subject matter jurisdiction over a given legal
 23 action, the complaint must be dismissed. Fed. R. Civ. P. 12(b)(1); Lightfoot, 580 U.S. at 91-92.
 24 One important limitation on subject matter is the Rooker-Feldman Doctrine.

25 In Rooker v. Fidelity Trust Co., plaintiffs brought a suit in the U.S. District Court for the
 26 District of Indiana to have an adverse judgement from an Indiana court declared "null and void"
 27 on the argument that contravened the federal constitution. 263 U.S. 413 (1923). On appeal, the
 28 U.S. Supreme Court rejected the district court's jurisdiction since that would be an exercise of

1 appellate jurisdiction and that federal district courts had “strictly original” jurisdiction. Id. at 416.

2 In D.C. Court of Appeals v. Feldman, the plaintiffs appealed a decision of the highest court
3 of the District of Columbia to the U.S. District Court for the District of Columbia and the U.S.
4 Court of Appeals for the District of Columbia Circuit. 460 U.S. 462 (1983). On appeal, the U.S.
5 Supreme Court held that only the U.S. Supreme Court had statutory authority to review the
6 decisions of the state courts. Id. at 486.

7 In sum, after the Rooker and Feldman plaintiffs litigated and lost in state court, “[t]heir
8 federal complaints . . . essentially invited federal courts of first instance to review and reverse
9 unfavorable state-court judgments.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280,
10 283 (2005). The Supreme Court has been clear “such suits [are] out of bounds, i.e., properly
11 dismissed for want of subject-matter jurisdiction.” Id. at 183-84. The doctrine applies even where
12 the state judgement at issue is not made by the highest state court. See Dubinka v. Judges of the
13 Super. Ct., 23 F.3d 218, 221 (9th Cir. 1994); Worldwide Church of God v. McNair, 805 F.2d 888,
14 893 n.3 (9th Cir. 1986). The doctrine applies even when a plaintiff raises a challenge involving the
15 federal constitution. Feldman, 460 U.S. at 483-84.

16 The Ninth Circuit Court of Appeals has explained that Rooker-Feldman bars a district court
17 from exercising subject matter jurisdiction when a federal plaintiff either (1) asserts as a legal
18 wrong an allegedly erroneous decision by a state court or (2) makes a more general challenge that
19 is “inextricably entwined” with such a state court decision. Noel v. Hall, 341 F.3d 1148, 1161 (9th
20 Cir. 2003). A claim is “inextricably intertwined” with a state court's decision when “adjudication
21 of the federal claims would undercut the state ruling or require the district court to interpret the
22 application of state laws or procedural rules.” Bianchi v. Rylaarsdam, 334 F.3d 895, 898 (9th Cir.
23 2003); Henrichs v. Valley View Dev., 474 F.3d 609, 613-14 (9th Cir. 2017) (“The doctrine applies
24 when the federal plaintiff’s claim arises from the state court judgement, not simply when a party
25 fails to obtain relief in state court.”). Simply put, federal plaintiffs cannot make “de facto appeal”
26 of a state court decision. Noel, 341 F.3d at 1163.

27 Plaintiff argues that Rooker-Feldman does not apply to suits for money damages. Plaintiff
28 here has specifically sought only money damages. While the Ninth Circuit has not squarely

1 addressed this question, it recently heard a similar argument and in dicta said “Although [Plaintiff]
 2 on appeal has pared back his claims and now seeks only damages, he has not demonstrated how
 3 these claims—brought against a state court judge for decisions the judge made in litigation—are
 4 anything other than an improper de facto appeal of the state court’s judgement.” McCoy v. Uale,
 5 No. 21-16877, 2022 U.S. App. LEXIS 28912, at *2 (9th Cir. 2022) (resolving the claim on absolute
 6 immunity) (unpublished).

7 Other Circuits have split on this issue. Compare Cowan v. Hunter, 762 Fed. Appx. 521
 8 (10th Cir. 2019) (finding preclusion not Rooker-Feldman applied to suits for money damages)
 9 with Johnson v. Sup. Ct. of Ill., 165 F.3d 1140 (7th Cir. 1999) (finding Rooker-Feldman applies
 10 to suits for money damages). Within this Circuit, sister courts have similarly split. See, e.g.,
 11 Kincaid v. Cnty. of Los Angeles, No. 22-cv-09056-JSL (MAA), 2023 U.S. Dist. LEXIS 128019,
 12 at *33-34 (C.D. Cal. June 6, 2023) (“Even if Plaintiff sought only damages, Rooker-Feldman
 13 would bar his claims stemming from alleged injuries from the state court’s decisions.”); Fitzhugh
 14 v. Miller, No. CV-19-04632-PHX-DWL, 2020 U.S. Dist. LEXIS 57926, at *12-13 (April 1, 2020)
 15 (finding that Noel excluded suits for money damages from Rooker-Feldman).

16 In the absence of binding precedent on point, the Court considers the matter. The
 17 unanimous view of the Supreme Court in Exxon was that Rooker-Feldman is “confined to cases
 18 of the kind from which the doctrine acquired its name: cases brought by state-court losers
 19 complaining of injuries caused by state-court judgments rendered before the district court
 20 proceedings commenced and inviting district court review and rejection of those judgments.” 544
 21 U.S. at 284. The Court finds that “injuries” can include money damages. Injury, BLACK’S LAW
 22 DICTIONARY (11th ed. 2019) (“3. Any harm or damage.”). Where, as here, the Court is asked to
 23 hear a claim that is entirely based upon whether a state court decision was wrongful, this Court is
 24 necessarily asked to review that decision and determine whether it should be rejected.

25 Further, the issue Plaintiff claims the underlying state court opinion made in error is an
 26 issue of Nevada state law. Nevada law grants the courts of the Eighth Judicial District Court, Family
 27 Division their jurisdiction. Whether that jurisdiction includes the power to make determination of domestic
 28 violence in the civil context is an issue of Nevada law not federal law.

1 The Court finds that on the facts of this case the Rooker-Feldman doctrine bars Plaintiff
2 from raising issues concerning a final decision of a state courts that were subject to full appeal,
3 including petitioning the Nevada Supreme Court, where the underlying issue is controlled by state
4 law, and a finding for the plaintiff would necessarily involve contradicting the holding of the final
5 state order. Allowing Plaintiff’s case to proceed would necessarily involve the review of a state
6 court decision regarding state law—the exact situation that the doctrine seeks to prevent.

7 More specifically, the Court finds that all of Plaintiff’s claims must be barred by the
8 Rooker-Feldman doctrine. The civil rights violations that Plaintiff brings in counts one to ten under
9 42 U.S.C. § 1983 are “inextricably entwined” with the underlying state court decision. Noel, 341
10 F.3d at 1161. Each of Plaintiff’s eleven causes of action directly implicates the reasoning and
11 validity of that state court opinion. Specifically, Plaintiff claims Clark County and Judge Ochoa’s
12 alleged decision to rely on criminal law created a due process violation due to a lack of notice
13 (cause 1), compromised his right to a fair trial (cause 2), violated his right to a beyond reasonable
14 doubt determination (cause 3), failed to recognize the presumption of innocence (cause 4), and
15 deprived him of a jury trial (cause 5), wrongfully terminated his constitutionally protected parental
16 rights (cause 7), and failed to apply the correct strict scrutiny analysis (cause 8). Plaintiff also
17 claims that Judge Ochoa violated his right to a fair trial by failing to recuse himself (claim 9) and
18 that Judge Ochoa retaliated against Plaintiff by issuing the order (cause 10).¹ Plaintiff further
19 claims Clark County, Steve Wolfson, Gerard Constantian, Jon Norheim, and Defendant Korpak’s
20 enforcement of a “void” order was malicious prosecution (cause 6). Finally, Plaintiff claims that
21 Clark County and the Eighth Judicial District Court deprived him of his civil rights by permitting
22 an official policy that authorizes and directs its family judges to issue orders like the one
23 complained of by Plaintiff (cause 11). The Court finds that addressing these issues would require
24 re-opening the matter, undercutting the state ruling, and interpreting the application of state laws.
25 Bianchi, 334 F.3d at 898.

26 Further, Plaintiff raised the very concerns he raises in this complaint on his direct appeal.

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28 ¹ To the extent causes nine and ten go beyond claims that Judge Ochoa wrongly issued the
state decision, as discussed supra, he is covered by absolute immunity.

1 His argument was considered by the Nevada Appellate Court and the Nevada Supreme Court. The
2 Nevada Supreme Court considered Plaintiff's arguments and affirmed Judge Ochoa's order. Those
3 Justices are well familiar with applying the federal constitution and applied de novo review to
4 Plaintiff's constitutional arguments. The United States Supreme Court considered Plaintiff's
5 petition for a writ of certiorari, in which he raised these same questions, and denied his petition.
6 That was Plaintiff's final appeal.

7 The Court is barred from acting as a further appellate court under Rooker-Feldman. See
8 Bianchi, 334 F.3d at 898 (noting that "Rooker-Feldman is a powerful doctrine that prevents federal
9 courts from second-guessing state court decisions by barring the lower federal courts from hearing
10 de facto appeals from state-court judgments . . .").

11 **D. Amendment**

12 Finally, because the Court finds that there are unavoidable barriers to the Court exercising
13 jurisdiction in this matter, the Court finds that the deficiencies in the complaint cannot be cured by
14 amendment. See Weilburg v. Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007).

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1 **V. CONCLUSION**

2 **IT IS THEREFORE ORDERED** that Defendants Norheim, the Eighth Judicial Circuit,
3 and Judge Ochoa's Motion to Dismiss (ECF No. 7) is **GRANTED**.

4 **IT IS FURTHER ORDERED** that Defendants Clark County, Constantian, and Wolfson's
5 Motion to Dismiss (ECF No. 8) is **GRANTED**.

6 **IT IS FURTHER ORDERED** that Defendant Korpak's Motion to Dismiss (ECF No. 12)
7 is **GRANTED**.

8 **IT IS FURTHER ORDERED** that Plaintiff's Complaint (ECF No. 1) is **DISMISSED** in
9 its entirety, with prejudice.

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11 DATED September 28, 2023

A stylized, handwritten signature in black ink, consisting of a large, looped 'R' followed by a vertical line and a horizontal stroke.

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14 **RICHARD F. BOULWARE, II**
15 **UNITED STATES DISTRICT JUDGE**
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